



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

August 1, 1984

You request a ruling regarding the application of the Massachusetts sales tax to sales of computer programs sold by ("Company") to its independent retail dealers in Massachusetts.

You state that the Company intends to sell to its independent retail dealers two computer software programs on magnetic tape. The first computer program consists in actuality of two programs: one, a standard "canned" program designed by and the other, a customized program designed by ("Computer Program Corporation"). The two programs are compatible: the standard "canned" program is sold directly to the dealers; the customized program is sold by the to the Company, and the Company in turn sells the customized program to its small-volume retail dealers.

The second computer program is designed completely by the for use by the Company's large-volume retail dealers. This program is designed to analyze sales, control inventory, and to perform other accounting functions. The program enables the dealer to communicate directly with the Company's computer system. The program is sold by the to the Company, and the Company in turn sells the program to its large-volume retail dealers.

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Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on retail sales of tangible personal property. A sale is defined as any transfer of title or possession of tangible personal property for consideration, including a rental or lease. (G.L. c. 64H, § 1(12)(a)).

A sale is further defined as

[t]he furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons.... (G.L. c. 64H, § 1(12)(f)).

The Massachusetts Sales and Use Tax Regulation on Automatic Data Processing provides that sales of computer programs on magnetic tape, whether "canned" or custom programs, are subject to the sales tax. (See 830 CMR 64H.06(6)(a), (b), (c)).

1. The first computer program, designed for use by the Company's small-volume retail dealers, is composed of two programs, both on magnetic tape. Therefore, the sales of the first program to the Company's small-volume retail dealers in Massachusetts are subject to the Massachusetts sales tax.

2. The second computer program, designed for use by the Company's large-volume retail dealers, is on magnetic tape. Therefore, sales of the second program to the Company's large-volume retail dealers in Massachusetts are subject to the Massachusetts sales tax.

Very truly yours,



Commissioner of Revenue

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